

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SOLID WASTE SERVICES, INC. d/b/a
J. P. MASCARO & SONS

and

Case 4–CA–33936

FRANKLIN D. TEJADA, an Individual

William Slack and Gabriel Tames, Esqs., for the General Counsel.
Albert DeGennaro, Esq., of Harleysville, PA, for the Respondent.

Decision

Statement of the Case

David L. Evans, Administrative Law Judge. This case under the National Labor Relations Act (the Act) was tried before me in Philadelphia, Pennsylvania, on November 10, 2005.¹ On June 9, Franklin D. Tejada, an individual, filed the charge in case 4–CA–33936 alleging that Solid Waste Services, Inc. d/b/a J. P. Mascaro & Sons (the Respondent), had committed various unfair labor practices under the Act. After administrative investigation of the charge, the General Counsel of the National Labor Relations Board (the Board) issued a complaint alleging, inter alia, that the Respondent had warned and discharged Tejada in violation of Section 8(a)(1) of the Act. The Respondent duly filed an answer to the complaint admitting that this matter is properly before the Board but denying the commission of any unfair labor practices.

Upon the testimony and exhibits entered at trial, and after oral arguments that counsel made at trial, I enter the following findings of fact and conclusions of law.

I. Jurisdiction

As it admits, at all material times the Respondent, a corporation with offices and places of business in various states of the eastern United States, including a facility that is located at Harleysville, Pennsylvania, has been engaged in the business of collecting, processing and disposing of solid waste. During the year preceding the issuance of the complaint, the Respondent, in the course and conduct of said business operations, purchased and received at the Harleysville facility goods valued in excess of \$50,000 directly from suppliers located at points outside of Pennsylvania. Therefore, at all material times the Respondent has been an employer that is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. II. Alleged Unfair Labor Practices

A. Facts

At the Respondent's Allentown facility, it employs 5 truck drivers who each morning drives empty dump trucks from there to Nassau County, New York. In Nassau County, the drivers pick up

¹ Unless otherwise indicated, all dates mentioned are in 2005.

other of the Respondent's trucks that, during the preceding night, have been loaded with sludge from a water-treatment plant. The drivers then drive the sludge back to Pennsylvania where they dump it at different sites that are also owned and operated by the Respondent. Then they drive the empty trucks back to the Allentown facility. To make this daily run, the drivers must drive through New York City. Generally, the drivers are not required to leave at any specific hour, but some leave quite early in order to avoid morning rush-hour traffic, especially that of New York City. Drivers are paid by the run, not by the hour. Drivers were regularly assigned to certain trucks. The trucks that the drivers leave at the Allentown facility overnight are serviced by the Respondent's mechanics, if they need it, and the keys are usually left in the ignitions.

Until February 20, David Gruver's job was that of the sole direct supervisor of the Allentown drivers; on February 20, Gruver was made a shop supervisor, as well, and Rick Fanelli became primary supervisor of the drivers. The drivers, however, were not immediately advised of the fact that Fanelli had been vested with more authority over them than was Gruver.

Gruver was called as a witness by the General Counsel. Gruver testified that when he was the sole supervisor of the drivers some would leave the Allentown facility as early as 3:00 a.m. This was true even though the drivers could not enter the Nassau County premises before 9:15 a.m. and were therefore sometimes forced just to wait at the Nassau County facility's gates until 9:15 arrived.

Until March 2, the drivers dumped the sludge at Birdsboro, Pennsylvania. On March 2, however, the Respondent began requiring the drivers to dump the loads at Mannheim, Pennsylvania. Mannheim is further from Allentown than is Birdsboro; therefore, the drivers would be required to spend more time making their runs. The Respondent, however, did not increase the amount that it paid for the longer trips.

The Respondent's employees are not represented by any labor organization. After making their March 2 runs, Tejada and some of his fellow employees gathered at the Allentown facility. Some, including Tejada, expressed among themselves dissatisfaction with the amount of their pay. Tejada asked driver Larry Farrar to speak on behalf of all drivers to Gruver about the matter. Tejada asked Farrar to act as spokesman because Farrar's English is better than that of the other drivers. Farrar, according to Tejada, agreed to speak to Gruver during the following morning when all employees could be present. Farrar did not testify; Tejada and one driver testified (through a translator).

Gruver testified that about 5:00 a.m. on March 3, when he was still at home, he received a telephone call from Farrar. Farrar stated that the keys to his assigned truck were missing. Gruver suggested another truck that should be available for Farrar's use that day. Several minutes later, Farrar telephoned Gruver again and said that the keys to the second truck were also missing. Gruver suggested a third truck that Farrar could use that day. Several minutes after that, Farrar called Gruver again and reported that the keys had not been in the third truck either, that Tejada had taken the keys, that Farrar had demanded the keys to his original truck from Tejada, and that Tejada had ultimately given him those keys. Gruver testified that it was 20 or 25 minutes from Farrar's first telephone call to him on March 3 until his third.

Gruver further testified that when he arrived at the Allentown facility about 6:15 a.m., Farrar had left on his run, but the 4 other drivers, including Tejada had not. The remaining drivers then met

with Gruver, and Tejada served as their spokesman. Tejada told Gruver that the drivers were dissatisfied with being required to drive further each day for the same amount of pay. Gruver told

- 5 Tejada and the others that he was no longer their primary supervisor, that Fanelli was, and that he could not help them. Gruver did, however, call Fanelli (who was still at home or on the way to the facility). Gruver told Fanelli that the 4 drivers had not left on their runs because they wanted to discuss the pay issue. Fanelli replied that he would be at the Allentown facility shortly. Gruver then left the 4 drivers and went to his work area, the garage.

- 15 On cross-examination, Gruver acknowledged that drivers were responsible for pre-trip inspections of their trucks and that the keys were necessary to do those inspections. Gruver further acknowledged that never before had an employee taken the keys from the ignitions of all of the trucks. Gruver further acknowledged that employees were always free to come to management to discuss their problems. Gruver testified that Farrar left at 5:45 a.m. on March 3 (only to return shortly thereafter because of an unrelated mechanical problem with his truck).

- 20 Tejada testified on direct examination that during the afternoon of March 2, all of the drivers, including Farrar, agreed not to leave so early on the morning of March 3, but rather to meet at 5:00 a.m. and wait until Gruver arrived so that they could talk to him about their wages. When asked what, if anything, he did on March 2 in furtherance of that objective, Tejada testified:

- 25 I thought that the following morning seeing we all arrive and the first thing that we do is just not think about anything but just take the truck and leave, I thought about writing a note and put it in -- place it in each of the trucks but I was not able to do it, the writing pen that I had was not writing and what I had was paper that was wax paper. So then I had another idea; so I took the keys from the truck[s] and I put them in the ashtray[s] so that it would be a reminder that that day was going to be different. I didn't want them to forget about our getting together. ... I left [the ashtrays] open. Some of the trucks don't even have an ashtray, so I just left [the keys] on top of the dashboard[s?].

- 35 Tejada testified, however, that he did not intend by this conduct to interfere with the work of any of the other employees.

- 40 Tejada further testified that he was unable to reach the Allentown facility by 5:00 a.m. because, at his home that morning, "it took some time" to extract his automobile from snow that had accumulated during the night. When he arrived, the 4 other drivers were present, including Farrar. Farrar was in the dispatch room, and the 3 others were in a car where they were keeping warm. Tejada approached the car first; the occupants told him that Farrar no longer wanted to participate in the meeting with Gruver. Tejada then went inside where he found Farrar talking on the telephone to Gruver. Tejada asked Farrar for the telephone; Farrar surrendered it, and Tejada told Gruver that the employees would like to talk to Gruver before they went to work. Tejada did not testify what Gruver replied. After speaking to Gruver on the telephone, Tejada turned to Farrar, and, according to Tejada's further testimony:

- 50 I asked him if it was true that he didn't want to be at our meeting. Then he told me that he couldn't find the key to the truck, I let him know where it was and when he was going towards the truck I tried again to persuade him so that he would stay. My major interest in having him with us was because he's the only native that speaks good English and I was the second one, that although I don't speak English very well but I was the only one that would

be able to replace him. ... He told me that he was afraid that the Company would held (sic) this against him and I told him that we were not doing anything wrong, that we were just trying to talk to Dave [Gruver] to see if they -- if he could talk to his supervisors in our behalf. ... He [Farrar] left.

5

Tejada and the remaining drivers met with Gruver when Gruver arrived within the next few minutes. Tejada served, as best he could, as spokesman for the group and as translator for the other drivers at the meeting. Gruver told the 4 gathered drivers only that they should give him a few days and that he would convey their concerns to his supervisors. As Gruver was saying this, Fanelli arrived. Tejada

10

testified that "we let him know our feelings." Fanelli gave the employees the same answers that Gruver had given them.

15

Tejada further testified that, after the 4 employees expressed their concerns to Gruver and Fanelli, the other employees left to go on their assigned runs, but Gruver asked Tejada to remain behind. Gruver told Tejada that he wanted to see him at 9:00 a.m. Tejada waited. At 9:00, Gruver told him to return at 11:00. Tejada again waited. At 11:00, Gruver told Tejada to go to an office to meet with Fanelli.

20

In the office, Fanelli first handed Tejada a disciplinary warning notice for having dumped his load at the wrong point at Mannheim on the evening before, March 2. Tejada protested that he had dumped his load where he was told to by the Respondent's agents at Mannheim. Fanelli then handed Tejada a notice of termination for insubordination. In a space for "Company Comments," was typed:

25

On Thursday, March 3, 2005, Mr. Tejada removed the keys from five Nassau vehicles that had not departed the Allentown yard. Mr. Tejada did not have the authority to prevent other drivers from performing their assigned work.

30

Mr. Tejada's actions caused a work stoppage; he prevented other drivers from performing their assigned work. His actions could have placed the Company in direct violation of their Contract with Nassau County and it could have cost the Company a loss of revenue.

These actions will not be tolerated; this will result in immediate separation of employment with J.P. Mascaro & Sons.

35

In a space for "Employee Comments," Tejada wrote that he had not removed the keys (entirely) from the trucks, that all trucks had been started by 6:12 a.m., that all the employees were "trying to do was to have a 10-minute meeting with Dave."

40

On cross-examination, Tejada admitted that the Respondent has an "open-door policy" that would allow employees to speak to supervisors at any time; that he took the keys out of the ignitions of all of the trucks on the evening of March 2 when he had been the last of the 5 drivers to leave for the day; that to remind the other employees of the meeting, he also could have left notes by securing pen and paper from the mechanics who were then still at the Allentown facility when he left on March 2; that he could not recall that the keys had been taken from the trucks' ignitions before; that on March 3 he could have gotten up earlier than he did and been at the facility by 5:00 a.m. as the other drivers had done; that when Farrar arrived at the facility he had then wanted to leave but he could not because the keys to his truck were not in the ignition; and that Farrar was waiting for him (Tejada) to arrive on March 3 to get his keys. Tejada argued, however, that Farrar "didn't really look for his keys ... if he had paid a little bit more of attention or been more careful he would have found them." Finally, Tejada was asked on cross-examination and he testified:

50

Q. And the first time that you dumped at Mannheim was the day before you hid the keys in the ashtray, correct?

A. Yes.

5 That is, there is no question that Tejada meant to hide the keys to the trucks.

Antonio Sanchez, one of the drivers who met with Gruver and Fanelli on March 3, testified that on March 2 he dumped his load of Nassau County sludge at Mannheim at the same point where Tejada had dumped his load; Sanchez was not disciplined for dumping in the wrong place.
10 Sanchez

further testified that he continued to drop his loads at the same point at Mannheim through the time that he terminated his employment with the Respondent in September 2005. On cross-examination, Sanchez testified that, as a practice, "I would leave at 5:00 [a.m.] at the latest because I didn't want to be dealing with traffic."
15

In the Respondent's case, Fanelli testified that he received no telephone calls on March 3 prior to arriving at the Allentown facility about 5:40 a.m. When he arrived, all of the trucks were in the lot, a fact that he then noted as unusual because "everybody's out of there, usually, 5:00 [a.m.] every
20

day." Fanelli walked into the dispatch room where 4 of the 5 drivers "were all having a meeting" with Gruver, Farrar being the exception. Fanelli asked Gruver why the gathered employees had not left on their runs; Gruver replied that Tejada had "hid the keys" to the trucks and that Tejada "wanted more money." Fanelli addressed Tejada and told him "you just don't do something like that, shut down the whole company like that. ... You should have came in before work or after work and talked to Dave and me and ... went through the right channels." Fanelli then told Tejada that the Respondent had just spent a great deal of money on new landfills and that "I'll be very honest with you; I don't think at this time you're going to get a raise." Fanelli concluded the meeting by stating that he or Gruver would discuss the matter of raises with Dennis McVeigh "and we'll see what we can do." (McVeigh, as described infra, is the Respondent's manager of transportation.) Fanelli further testified that after he had been at the March 3 meeting for about 15 minutes, Farrar entered the room. Fanelli asked Farrar why he had not left yet; Farrar replied that there were no keys in his truck. Gruver said that Tejada had "hid" the keys in the ashtray.
25
30
35 Farrar then left.

Fanelli further testified that later during the morning of March 3, Ron Stall, supervisor of the Respondent's Mannheim dump site, told him that, on the afternoon before, Tejada had dumped his load in the wrong place. (The Respondent did not call Stall to testify, and this testimony was admissible only as evidence that Fanelli had received Stall's report.) Fanelli then created the warning notice to issue to Tejada for that conduct, "[s]o he didn't do it again." Still later in the morning, Gruver told Fanelli that Gruver had spoken to McVeigh and McVeigh had said that Fanelli was to discharge Tejada for hiding the trucks keys. Fanelli then met with Tejada. Fanelli first asked Tejada why he had dumped where he had on March 2; Tejada replied that someone had told him to. Fanelli then told Tejada that he was fired "[f]or hiding the keys."
40
45

As the Respondent's director of transportation, McVeigh is the ultimate supervisor for drivers in addition to those directly involved in this case. McVeigh testified that early on March 3 Gruver called him at home and stated that "an individual," whose identity Gruver did not then know, had taken the keys out of the Allentown trucks and it did not appear that the Respondent would be able to perform its contract with Nassau County that day. McVeigh asked if the trucks had been damaged; Gruver replied that he did not know as he had not gotten to the Allentown facility yet and that he would find out and call McVeigh back. McVeigh testified that the only
50

reason he could think of that someone would take the keys from the trucks was to “disable them.” A few minutes later, Gruver called again and said that “Mr. Tejada took the keys out of the trucks.” McVeigh was asked and he testified:

5 Q. And so what happened next?

A. I told him I wanted the guy fired. Do not let him get in that truck -- one of my trucks.

Q. And why did you tell him you wanted him fired?

10 A. Because it -- to me, it's such an egregious occurrence to take the keys out of someone's truck. I drove a truck for 16 years and I can't conceive of someone taking the keys out of my truck, which carries a 73,000 pound truck [load?] that's going to drive from here to New York, you know, I don't understand the whole logic in how someone would do that. What would be the purpose in -- for someone to take the keys out of a whole fleet of trucks if it was not to do something damaging to the trucks?

15 McVeigh further testified that Gruver expressed a reluctance to discharge Tejada himself; McVeigh responded that if Gruver were not willing to discharge Tejada, either he or Fanelli would do it. McVeigh was further asked and he testified:

20 Q. You've heard a lot of testimony today about a meeting, correct?

A. Um-hmm. [Affirmative.]

Q. Did Mr. Gruver tell you about a meeting?

A. Not at all.

25 Q. Did you know anything about a meeting when you told Gruver to terminate Tejada?

A. Absolutely not.

30 McVeigh further denied that anyone else told him before he ordered Tejada's discharge that there had been a meeting with employees on the morning of March 3. McVeigh denied that he spoke to Fanelli on March 3 before Tejada was fired, and he testified that he did not know beforehand that Fanelli was going to handle the discharge.

B. Analysis and Conclusions

35 The complaint alleges that the Respondent warned and discharged Tejada in violation of Section 8(a)(1). The General Counsel first argues that the Allentown drivers were engaged in activities that are protected by Section 7 of the Act when they agreed on March 2 to seek a meeting with Gruver on March 3 to discuss wages. That proposition is unquestionably correct; an employer may not, without violating Section 8(a)(1) of the Act, discipline or otherwise
40 threaten, restrain, or coerce employees because they engage in protected concerted activities such as requesting, or participating in, a meeting with management with the objective of discussing their terms and conditions of employment. *NLRB v. Washington Aluminum Co.*, 370 U.S. 9, 12-15 (1962). The Respondent contends, however, that the supervisor who made the decision to discharge Tejada, McVeigh, did not know that Tejada, and other employees, had engaged in
45 protected concerted activity before the decision to discharge Tejada was made.

Employer knowledge of the concerted nature of employee activity is an indispensable requirement for any finding that an employee has been discharged, or otherwise disciplined, in violation of Section 8(a)(1). In the seminal case of *NLRB v. Burnup & Simms*, 379 U.S. 21, 22
50 (1964) the Supreme Court plainly stated:

In sum, Section 8(a)(1) is violated if it is shown that the discharged employee was at the time engaged in a protected activity, *that the employer knew it was such*, that the basis

of the discharge was an alleged act of misconduct in the course of that activity, and that the employee was not, in fact, guilty of that misconduct. (Emphasis added.)

5 *Amelio's*, 301 NLRB 182 (1991), is a good example of the Board's consistent following of this reasoning. In *Amelio's*, the administrative law judge found a violation of Section 8(a)(1) because he found that the discharged employee had not engaged in some alleged misconduct during a course of protected concerted activities. The Board reversed, stating: "there is insufficient evidence to show that the Respondent knew of the concerted nature of that activity when it discharged [the employee]."

10 In this case, the General Counsel does not dispute McVeigh's testimony that he, and he alone, made the decision to discharge Tejada. Nor does the General Counsel dispute McVeigh's testimony that, at the time that he made the decision, he had not been informed (by Gruver or anyone else) that the employees had sought and obtained a meeting with Gruver and Fanelli to discuss wages. And I found all of that testimony by McVeigh to be credible.² The General
15 Counsel has therefore not adduced a *prima facie* case of unlawfulness in the discharge of Tejada. I shall therefore recommend dismissal of that allegation of the complaint.³

20 The complaint further alleges that the Respondent's issuance of the March 3 warning notice to Tejada separately violated Section 8(a)(1). Specifically, the General Counsel contends that the warning notice was issued, not because Tejada had dumped sludge at the wrong place on March 2,

25 but because he had, just hours before the issuance of the warning notice, instigated the protected concerted activity of the meeting with Gruver and Fanelli and because he had served as spokesman for the employees during that meeting.

30 Such allegations of discrimination because of prior union activities are to be decided under the principles of *Wright Line*, 251 NLRB 1083 (1980), *enfd.*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982), approved in *Transportation Management, Inc. v. NLRB*, 462 U.S. 393 (1983). The General Counsel has the initial burden of establishing a *prima facie* case which is sufficient to support an inference that an employee's protected concerted activity was a motivating factor in an employer's action that is alleged to constitute violative discrimination. A
35 *prima facie* case of discrimination under Section 8(a)(1) is established where it is found that: (1) the subject employee has engaged in concerted activities that are protected by Section 7 of the Act; (2) the employer possessed knowledge (or a suspicion) of that protected activity; (3) the employer has imposed a discharge or other adverse action upon the employee; and (4) the employer possessed some animus, or hostility, toward the employee's protected concerted activity. If such a *prima facie* case is established, the burden shifts to the employer to come
40 forward with evidence that the alleged discriminatory conduct would have taken place even in the absence of the protected concerted activities (or, in other cases, even in the absence of protected union activities).

2

I further found credible, and reasonable, McVeigh's testimony that he feared sabotage when he was informed that the keys to the trucks had been taken.

³ For possible purposes of review, I here state that I do not credit Tejada's testimony that on March 2 he hid the keys only as a "reminder" to the other drivers to attend the meeting (as they had just agreed). It rather appears to this finder-of-fact that Tejada hid the keys because he knew that he would not be arriving at the facility by 5:00 a.m. on March 3, and he did not want the other drivers, especially Farrar, to leave before he did so.

In this case, Fanelli made the decision to warn Tejada, and Fanelli knew at the time that he made that decision that Tejada had participated, and led, the protected concerted activity of the meeting about wages. And, as the General Counsel points out, the warning notice was issued within hours of that meeting. Under *Wright Line*, the timing, alone, is sufficient to support an inference of unlawful motivation, or animus.⁴ The elements of adverse action, knowledge of protected concerted activities and animus having been established, the burden has shifted to the Respondent to come forward with probative evidence that it would have issued the warning notice to Tejada even in the absence of his protected concerted activity of leading the wage-complaint meeting of March 3. The Respondent, however, has not come forward with probative evidence on the point. The Respondent has adduced only hearsay testimony by Fanelli that he was told by Stall on March 3 that on March 2 Tejada had dumped sludge in the wrong place. Moreover, the Respondent has not come forward with any evidence to rebut the General Counsel's evidence of disparate treatment of Tejada; that is, the Respondent has offered nothing to dispute Sanchez' testimony that he dumped sludge at the same point that Tejada did on March 2, and Sanchez was not disciplined in any way. In this posture of the case, it must be concluded that the Respondent has not demonstrated by a preponderance of the probative evidence that it would have issued the warning notice to Tejada, even in the absence of his

protected concerted activities. Accordingly, I find and conclude that by issuing the March 3 warning notice to Tejada the Respondent violated Section 8(a)(1), as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The National Labor Relations Board orders that the Respondent, Solid Waste Services, Inc. d/b/a J. P. Mascaro & Sons, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Issuing warning notices to its employees or otherwise discriminating against its employees because of their protected concerted activities.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions that are necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any references to the March 3, 2005, warning notice that it issued to Franklin Tejada, and within 3 days thereafter notify Tejada in writing that this has been done and that the warning notice will not be used against him in any way.

⁴ The Board has held that where adverse action occurs shortly after an employee has engaged in protected activity, an inference of unlawful motive is raised. *La Gloria Oil*, 337 NLRB No. 177 (2002), enfd. 71 Fed. Appx. 441, (5th Cir. 2003) (Table).

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its facilities in Allentown, Pennsylvania, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 3, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent had taken to comply.

Dated, Washington, D.C., December 15, 2005.

David L. Evans
Administrative Law Judge

⁶ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted By Order of the National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT issue warning notices to you, or otherwise discriminate against you, because you have engaged in activities that are protected by federal law.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed to you by federal law.

WE WILL, within 14 days of the Board's Order, remove from our files any references to the March 3, 2005, warning notice that we issued to Franklin Tejada, and WE WILL, within 3 days thereafter, notify Tejada in writing that this has been done and that the warning notice will not be used against him in any way.

SOLID WASTE SERVICES, INC. d/b/a
J. P. MASCARO & SONS

(Employer)

Date _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent of the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor, Philadelphia, PA 19106-4404 (215)
597-7601

Hours: 8:30 a.m. to 5 p.m.

5 THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS
10 PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE
OFFICER, (215) 597-7643.